

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
September 15, 2008
Department of Environmental Quality
Last Chance Gulch Building Room 112, 1100 North Last Chance Gulch
Helena, MT

Board members in attendance were Karl Hertel, Adele Michels, Steve Michels and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:00 a.m.

Approval of Minutes – July 21, 2008

The first item of business was approval of the Minutes of the meeting of July 21, 2008.

Mr. Hertel moved to accept the minutes as written. Ms. Michels seconded. **The motion was unanimously approved.**

Dispute of Eligibility – North Star Aviation, Saltese, Facility #99-95058, Rel # 4649

The Board staff recommended this release be determined ineligible because the fuel was released from a non-eligible, mobile storage tank. Mobile storage tanks used to transport petroleum from one location to another are excluded from eligibility under §75-11-308(2)(f), MCA. An employee of North Star Aviation was filling a mobile fueling truck from an AST at the bulk loading facility when he left the area to secure airplanes due to high winds. When he returned, the truck and containment area had overfilled. The Board staff has not reviewed compliance of the storage tank system, because the release is excluded on the grounds that the release was from a non eligible mobile tank.

Steve Wolters, North Star Aviation, stated that he was refilling a fuel truck, which occurs through a direct coupling on the bottom of the truck tank. A storm hit without any warning, with gale force winds that presented a danger to planes on the ramp that were not tied down. He left the fueling area, hitting the switch on the way by, to help tie down the planes. When he returned to finish filling the truck, he discovered that the switch had not turned off.

Lee Bruner addressed the Board on behalf of North Star Aviation. He believes the release is eligible. The Board has not previously addressed the issue of a truck that was physically connected to the eligible tank system. He argued that when a tanker truck is filling a tank system and overfills the tank, the release is covered. And when a customer overfills the tank in his vehicle at the pump, the release is covered. So the question is what to do with a mobile tank that is being filled from an eligible tank and it is physically connected to the system. In this case, there is not even a nozzle filling the truck. It is physically coupled to the tank system. It appears to come down to a question of which way the fuel is flowing in the line.

Mr. Hertel asked if the hose had an automatic shutoff.

Mr. Wolters replied that there was no automatic shutoff.

Mr. Wadsworth provided the citation to the paragraph in the Board's statute that contains the mobile tank exception, §75-11-308(2)(f), noting that a mobile tank is one that is used to transport fuel from one location to another. He indicated that one of the reasons the Board has covered automobile overfills in the past is that autos do not transport fuel from one place to another, but run on the fuel themselves. The tanker in this case falls under the definition of a mobile storage tank.

Vice-Presiding Officer Noble asked for more information concerning the magnitude of the spill and extent of contamination.

Tyler Etzel, PBS&J, consultant for North Star Aviation, described North Star's activities once the release was discovered. North Star's immediate actions prevented more serious impacts to soil and groundwater. The emergency response achieved the following: recovery of 450 gallons from the loading/unloading containment area, excavation of 125 cubic yards of contaminated soil in the storm water drainage swales, and creation of capture basins for free product that captured and recovered 350 gallons of product. PBS&J sampled the airport maintenance building and Forest Service domestic supply wells for impacts. Free product recovery trenches were excavated around the release area and

within the storm drain path of the spilled product. Another 175 cubic yards of soil were excavated and stockpiled from the recovery trenches. Five 4-inch diameter recovery wells were installed within the recovery trenches. Ongoing vacuum truck recovery has recovered another 350 gallons of free product from the recovery trenches. A DEQ-approved corrective action plan has been implemented, including completion of eight geo-probe soil borings with collection of eight soil samples, and on-going monitoring of the recovery wells. Recovery has diminished to the point that no additional product is being recovered from the wells. Future plans include installation of three additional monitoring wells, evaluation of soil and groundwater results to determine if further excavation is needed. Once results are received they will decide if the 300 cubic yards of stockpiled soil should be moved to a landfill or landfarmed nearby. Estimates are that 4,500 gallons of fuel were spilled, and 800 gallons have been recovered. Once soil sample results are in, they will estimate how much fuel is contained in the stockpiled soil. Mr. Etzel noted that Mr. Wolters has cooperated with the DEQ, and implemented all the requests he has received.

Ms. Michels asked how soon the work began after the spill.

Mr. Etzel responded that the airport had two backhoes on site at the time of the spill, and they began recovery and cleanup operations immediately. He noted that the volume of the secondary containment around the trucks was about 2,000 gallons, the largest tank on site is about 20,000 gallons, with a containment basin of 20,000 gallons. There is an SPCC plan in place. He indicated that one of the problems was the wind was so strong it was pushing the product out of the containment basin.

Paul Johnson, Attorney for the Board, noted that the Legislature defined mobile storage tank releases as ineligible for the fund. The law is clear about that. The Board's precedent also is that releases from a mobile storage tank are ineligible. The distinction that Mr. Brunner suggested does not exist in the law. He reminded the Board of the importance of making decisions consistent with precedents set in earlier Board decisions.

Mr. Brunner responded that statutes cannot be drafted to cover every conceivable situation. He believes this is a distinct fact pattern that allows the Board to make a different decision. He knows of no other case where the mobile storage tank was physically bolted into an eligible system where the release occurs during the transfer process. There is no precedent in this case.

Mr. Johnson stated that while the Board does have a certain amount of discretion in certain situations under the Rules of Administrative Procedure, the Board does not have discretion to change statutory black letter law. In this case, the law is clear that a release from a mobile storage tank is not eligible.

Mr. Hertel moved to ratify the staff recommendation that the release be determined ineligible. Mr. Michels seconded. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the applications for eligibility that are before the Board. The staff recommended that eight releases be determined eligible, with the North Star release recommended ineligible. (See table below).

Board Staff Recommendations Pertaining to Eligibility From July 18, 2008 thru September 3, 2008				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Ingomar	MDT 43 4402 Ingomar	44-09687	3486 April 1998	Eligible – 7/23/08
Hamilton	North Star Aviation, Inc	99-95007	4668 June 2008	Ineligible – 7/11/08
Red Lodge	The Ski Station	60-15056	4577 Sept 2006	Eligible – 8/4/08
Billings	Former Walters Bulk Plant	56-04534	4284 June 2003	Eligible – 8/14/08
Big Sandy	Ezzie's Wholesale	08-00855	4614 May 2007	Eligible – 8/14/08
Lewistown	Auto Service Center	14-04762	2713 Aug 1995	Eligible – 8/14/08

Table continued. . . .

Board Staff Recommendations Pertaining to Eligibility From July 18, 2008 thru September 3, 2008				
Pablo	Bigfork Ready Mix	24-13438	4590 May 2007	Eligible – 8/14/08
Kalispell	Flathead County Road Department	15-06286	3435 May 1998	Eligible – 8/14/08
Dodson	Former Dodson Conoco	60-15101	3912 Feb 2000	Eligible – 9/3/08

Mr. Noble notified the Board that he will abstain from voting on the eligibility application for the Flathead County Road Department.

Mr. Hertel moved to ratify the eligibility applications as listed. Mr. Michels seconded. **The motion was unanimously approved.**

Claims over \$25,000

There were no claims for an amount greater than \$25,000 that required action.

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of July 23, 2008 through September 3, 2008. (See table below). There were 104 claims, totaling \$553,456.98. There were four denied or zero reimbursement claims; one for a release that was determined ineligible, two for a release with third party insurance coverage, and one for a work plan not submitted per DEQ request.

<u>WEEKLY CLAIM REIMBURSEMENTS</u> September 15, 2008 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
July 23, 2008	2	\$57,865.24
July 30, 2008	3	\$42,753.25
August 6, 2008	1	\$91,385.76
August 13, 2008	42	\$78,217.82
August 20, 2008	26	\$104,504.21
August 27, 2008	10	\$71,874.71
September 3, 2008	20	\$106,855.99
Total	104	\$553,456.98

Because a claim for report preparation on the Nash Brothers site in Scobey (Release 3821) has recently been paid, Ms. Michels asked DEQ to provide an update on the cleanup at that site at the next Board meeting. She is interested in an explanation of what remains to be done and when the release will likely be closed.

Mike Trombetta, Hazardous Waste Cleanup Bureau Chief, stated that even after a dig-out there is quite a bit of follow-on monitoring to be sure the dig-out was successful. Most dig-outs leave some contamination in the smear-zone, so the site will be monitored until the water is clean. He will bring a report to the next Board meeting.

Ms. Michels moved to ratify the weekly reimbursements as presented. Mr. Hertel seconded. **The motion was unanimously approved.**

Tank Insurance

Mr. Wadsworth introduced Bob Ferguson, from Forth Worth, Texas, who made a presentation to the Board concerning tank insurance. Mr. Wadsworth's intent is to provide the Board with information that may be useful for short and long term fund management planning and the role insurance may play in that planning.

Mr. Ferguson's insurance organization, Tank Owner Members Insurance Company, was formed by oil marketers in Texas to insure their underground storage tank exposures. Because tank owners were not able to purchase third-party liability insurance, they formed a risk-retention group in Vermont and bought re-insurance for the group. They have since expanded to provide for both remediation and third-party liability insurance. He presented ideas on how to help relieve some of the Fund's financial pressures as well as keep the Fund in control of the program. He discussed some of the advantages and disadvantages of private insurance, and presented various insurance coverage alternative scenarios.

Mr. Wadsworth commented that Mr. Ferguson is giving a more detailed presentation to the Montana Petroleum Marketers Association and asked that Ms. Alexander, Director, provide a report on the presentation and the Marketers' view to the Board at the next meeting.

2009 Draft Legislation

Mr. Wadsworth informed the Board of the items of proposed Board legislation that are not moving forward. Those items are: 1) the fee increase, 2) removing administrative costs to the General Fund, 3) co-pay increase for USTs, 4) AST inspection compliance program, and co-pay increase, 5) co-pay scheme and cost cap for all other PSTs, including ASTs not inspected. The remainder of the Board's proposals are 1) the statute of limitations (i.e., requiring owners/operators to file an eligibility application within a year of the time the release is discovered, and requiring actions with regard to Board decisions within 30 days), 2) increasing the fund balance controls, 3) housekeeping language regarding co-mingled plumes, and adding language concerning judicial action to the current language on administrative orders, 4) the insurance incentive language, and 5) changing the Board's law to require a co-pay on double-walled tanks as a result of the Energy Policy Act of 2005.

Ronna Alexander remarked that the Petroleum Marketers Association would likely support all the remaining legislative proposals, with the possible exception of the statute of limitations provision.

Vice-Presiding Officer Noble called a recess at 11:56 a.m. The meeting resumed at 12:15 p.m.

Fiscal Report

Mr. Wadsworth presented the fiscal report for Fiscal Year-End 2008, and for the first two months of FY09. There was no discussion.

Board Attorney Report

Mr. Johnson presented the attorney's report (see table below). In the Havre Cenex Supply and Marketing/Milk River Coop case, depositions have been taken and briefs on the Board's motion for summary judgment have been completed and submitted to the hearing examiner. The hearing examiner may want to hear argument on the briefs before his decision.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #3138	Eligibility 11/25/97	Dismissal pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #3642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Butte	Shamrock Motors	47-08592 Release #3650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #3809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #3955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #3980	Eligibility 2/19/02	Case stayed.

Table continued . . .

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently insurance coverage
Great Falls	On Your Way	07-09699 Release #3633	Reimbursement adjustment	Hearing requested 2/15/07 Awaiting identification of attorney
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	Hearing requested 2/15/07 Awaiting identification of attorney
Whitefish	Stacey Oil - Don Gray	15-04428 Release #1034	Reimbursement adjustment	Hearing requested 2/15/07 Awaiting identification of attorney
Silver Gate	Hightower property	56-14109 Release #4274	Eligibility contested 5/29/07	Hearing examiner set Discovery Deadline: 11/7/08; Hearing to be set thereafter
Havre	Cenex Supply & Marketing	21-07467 Release #826	Reimbursement adjustment 8/14/07	Hearing being briefed.
Kalispell	City Service West	15-02330 Release #1208	Eligibility Contested 12/6/07	Hearing requested 12/6/07 Awaiting identification of attorney

Mr. Johnson left the meeting at 10:34 a.m.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He pointed out that the number of requests for eligibility is higher for May through July 2008 than the same period last year. He also pointed out that the value of corrective action plans received is lower for calendar year 2008 than was the case for the same period in calendar years 2006 or 2007.

Petroleum Technical Section Report

Mike Trombetta, Hazardous Waste Site Cleanup Bureau Chief, presented the PTS report. He remarked that there were twelve new confirmed releases between January 1 and July 21, 2008. Thirty releases were closed during the same period. There are currently 1,643 active releases, and 2,764 have been resolved.

He notified the Board and the public that a Consultant's Meeting is scheduled for November 19, 2008, in Room 35 in the Metcalf Building. The current agenda includes Board legislation, new proposed rules to clarify suspected releases. He also stated that the Consultant's Meeting will be conducted by video conference with the DEQ Billings office, and possibly DEQ Kalispell, so that more consultants may be able to join the meeting by meeting at the Billings or Kalispell offices of DEQ.

He told the Board that the PTS priority system has been refined, based on recent experience.

Ms. Alexander asked how the priority system affects the work requested and done on the site.

Mr. Trombetta remarked that the priority system is used to prioritize the PTS case managers' work load. Work is done on the highest priority sites first. Work might also be done when an owner/operator requests it because a land transfer or loan application is in the works. Opportunistic cleanups may also occur on lower priority sites. For instance, in cases where a road is being rebuilt or a building removed that will allow access to previously inaccessible contamination. These types of sites are often priority 2.0 or 3.0. Groundwater management sites are priority 4.0 and those sites pending closure are priority 5.0. The only work done on pending closure sites is work such as landfarm tilling or closure, or well abandonment.

There is not a direct link between the amount of money required to perform the work and the priority of the site. However, they do not work on lower priority sites unless there is some reason that would make it cost effective. Cleanup is not driven by how much money is available, but by the priority of the site.

Beacon Carter Bulk Plant

Dan Kenney, Petroleum Technical Section Supervisor, made a presentation to the Board concerning a pending work plan for the Beacon Carter Bulk Plant in Miles City (Facility 09-07084, Release 2937). It is a priority 1.2 site, largely because there is free product present at the site. The PTS Section is recommending source removal of 3,350 cubic yards of soil, landfarming the soil at two separate landfarm sites, replacement of four monitoring wells, and two rounds of semi-annual monitoring. The Department is concerned that the plume could impact a water line running along the southeast boarder of the facility.

A discussion followed the presentation. The Board expressed concern that if the soil is excavated before the free product is removed, the clean fill will become re-contaminated. The Board asked about the speed and direction of groundwater flow, the character of the soil, and whether dewatering will be conducted before or during excavation. The Department responded that if the source of the contamination is removed through excavation, the free product will be removed at the same time. The groundwater flow direction is from the southeast to the northwest across the property, away from the residential area. The soils are tight clay. The Department is concerned about vapor impacts on the residential area, since vapors do not follow groundwater flow. The source area will be excavated to groundwater, a depth of about 15 feet. Groundwater cannot be cleaned until the source of contamination is gone.

During the discussion, the Board noted that there has been no emergency response, no immediate remediation, it is not adequately characterized, and there appears to be no threat to local water supplies. The plume is not migrating through the tight clays and there are no potential receptors. It appears to be designated priority 1 only because of the presence of free product. The Board postulated that an alternative approach could be free product removal rather than excavation. The Department responded that the only effective way to get the free product out is to excavate the soil. If free product removal is the chosen alternative, the site will require monitoring until the water is clean, which will take many years. Mr. Trombetta stated that this particular site is leased from Burlington Northern Railroad, and BN does not let its lessees out of their leases until a site meets cleanup standards, regardless of whether there is a functioning business there or not.

Benchland Coop

Mr. Kenney reported to the Board concerning the question of how long the Benchland Coop site would need to be monitored. He indicated that the site is currently ranked as 2.0-medium priority characterization, and is currently not assigned to a case manager. There are two wells that do not need to be sampled again, and one more sampling event, at low groundwater, is necessary before an estimate of future sampling requirements can be made. Sites such as Benchland must be monitored until it is clear the groundwater is being cleaned up. DEQ is prohibited from closing a site if it has an exceedance of a groundwater standard, even if the trend in contamination is downward. Those standards are found in DEQ-7.

Mr. Trombetta stated that all water in Montana must meet DEQ-7 standards, whether or not people are drinking it. For petroleum constituents, the standards are all drinking water standards. Not all constituents in gasoline are listed in DEQ-7. For the constituents not listed in DEQ-7, the Department has looked at generating Risk-Based Screening Levels (RBSLs) directly based on human consumption and has numbers established for what is safe for someone to drink the water. The only time the RBSLs must be looked at is if someone is drinking the water. The RBSLs cover about 70% to 80% of the constituents in gasoline.

Mr. Hertel asked if the Board should pursue legislation that would make it easier to close sites such as Benchland.

Mr. Trombetta responded that it would save the fund money if water did not have to be cleaned up to drinking water standards. DEQ recognizes that a lot of sites are kept open because they are waiting for groundwater to clean up to drinking water standards. The Department has worked to reduce costs by reducing the frequency of monitoring and number of wells monitored.

West Gate Station

Scott Gestring, Petroleum Technical Section, made a presentation to the Board concerning a pending work plan for the West Gate Station site in West Yellowstone. The release is ranked 1.1, the highest priority. Contamination is present to at least 28 feet below the ground surface, with free product present in one well. Depth to groundwater is about 40 feet, and groundwater flow is to the north-northwest. The soils are primarily obsidian sand. The contamination plume may be expanding, and there is a domestic well to the east that may be threatened. The work plan is to conduct additional assessment of the extent and magnitude of the contamination and free product plume, continue free-product

removal as well as install a larger free-product recovery system, and monitor to determine the effectiveness of the system. Soil removal is not feasible because there are too many structures in the area.

Vice-Presiding Officer Noble commented that the plan seems well thought out, especially in view of the geologic conditions in the area and the proximity of domestic wells to the area of contamination.

Mr. Wadsworth explained that the Board has asked to have those work plans over \$100,000 presented to the Board before they are obligated. Now that the Board has heard a presentation on these work plans, they will become available for obligation. Due to the fact that the work plans are high priority (release priority at work plan date), these work plans will be obligated before other plans that have lower priorities.

Public Forum

There we no comments from the public.

The meeting adjourned at 1:24 p.m.

Greg Cross – Presiding Officer